IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3118 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARLE INTERNATIONAL LTD.

Versus

COMMISSIONER OF INCOME TAX AHMEDABAD III

Appearance:

1. Special Civil Application No. 3118 of 2004

MR JP SHAH for Petitioner No. 1

..... for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 12/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

RULE. Mr Manish R Bhatt, learned Standing

Counsel waives service of Rule on an advance copy of the petition having been served.

In the facts and circumstance of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the coercive recovery being made by the respondent-authorities including attachment of the petitioner's bank accounts for non-payment of its income-tax dues. The petitioner has already filed an appeal before the Income-tax Appellate Tribunal, Ahmedabad along with Stay Application No.9/Ahd/2004 for stay of recovery, pending hearing of the appeal.

3. Ordinarily, this Court would not entertain such petitions. However, the learned counsel for the petitioner has pointed out the following peculiar facts and circumstances of the case for seeking intervention of this Court under Article 226 of the Constitution :-

(i) When the petitioner's stay application was fixed for hearing before the Tribunal on 5.3.2004, unfortunately wife of one of the Members of the Tribunal passed away and, therefore, stay matter was adjourned. The Tribunal hears the stay applications on the first and last Friday of the month and, therefore, the stay application is now going to be heard on 26.3.2004;

(ii) The petitioner has already paid 33% of the tax demand or 24% of the tax-cum-interest demand;

(iii) The petitioner had disposed of an undertaking which fetched a sizeable amount of Rs.29.34 crores and the petitioner invested the same under Section 54EA of the Act. The said amount is still lying in the mutual fund with which the amount was invested and is earning regular income. The petitioner undertakes not to withdraw Rs.4 crores out of the said amount till the Tribunal hears and decides the stay application.

4. In view of the aforesaid extraordinary circumstances, it appears to the Court that the respondent-authorities are required to be restrained from making any coercive recovery of the petitioner's tax dues which are the subject matter of the appeal before the Tribunal till the Tribunal hears and decides Stay Application No.9/Ahd/2004. Consequently, the respondent-authorities shall also release the bank

accounts from attachment.

This shall be done upon an undertaking being filed by the Managing Director of the petitioner-Company that the petitioner-Company shall not withdraw an amount of Rs.4 crores from the aforesaid investment under Section 54EA of the Act.

In view of the statement coming from the learned counsel for the petitioner that the undertaking will be filed by 15.3.2004, the bank accounts of the petitioner shall be released from attachment with effect from today.

It is expected that the Tribunal will hear the stay application on 26.3.2004 and shall decide it by 31.3.2004.

It is clarified that this Court has not at all gone into the merits of the stay application and this order is passed only in view of the peculiar facts and circumstances of the case.

5. The petition is accordingly disposed of in terms of the aforesaid directions.
Rule is made absolute to the aforesaid extent.
Direct service is permitted today.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
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